



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.01.2018

DELIVERED ON : 12.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)Nos.5932 and 5531 of 2013

and

M.P.(MD)Nos.2 and 3 of 2013 in Crl.O.P.(MD)No.5932 of 2013

and

M.P.(MD)No.2 of 2013 in Crl.O.P.(MD)No.5531 of 2013

Sundaram
S.Kalyani

...Petitioners in Crl.O.P.(MD)No.5932/2013

Kavitha
S.Karthick Kumar

...Petitioners in Crl.O.P.(MD)No.5531/2013

Vs.

1.The Inspector of Police,
Central Crime Branch,
Madurai City.

2.S.Gopalakrishnan ...Respondents in both the Crl.O.Ps.

COMMON PRAYER: Criminal Originals Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in C.C.No.73 of 2011 on the file of the Judicial Magistrate Court No.I, Madurai, in Cr.No.6 of 2013 on the file of the first respondent police and quash the same.

For Petitioners : Mr.R.Balakrishnan
(in both the Crl.O.Ps.)

For R1 : Mr.K.S.Duraipandian
(in both the Crl.O.Ps.) Additional Public Prosecutor

For R2 : Mr.M.Siddharthan
(in both the Crl.O.Ps.)

COMMON ORDER

The petitioners in Crl.O.P.(MD)No.5932 of 2013 are Accused Nos.2 and 3 and the petitioners in Crl.O.P.(MD)No.5531 of 2013 are Accused Nos.4 and 5 in C.C.No.73 of 2011, pending on the file of the Judicial Magistrate Court No.I, Madurai.



2.Now, they filed these petitions to quash the entire proceedings of C.C.No.73 of 2011.

3.The learned counsel appearing for the petitioners submitted that the allegations levelled in the FIR and the charge sheet is only against the first accused Selvamanickam and the complaint was lodged only on 02.02.2007 for the alleged occurrence that had taken place in the year 1993 to 2006. Even though 55 witnesses were examined by the respondent police, none of the witnesses made a single word or allegation against the petitioners in both the Criminal Original Petitions. So, the proceedings in C.C.No.73 of 2011 initiated against the petitioners are all liable to be quashed. Furthermore, he submitted that the allegations and averments mentioned in the FIR and the charge sheet shows that the petitioners have not committed any offence as stated by the respondent police.

4.This Court heard the submissions of the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the second respondent on the above submissions.

5.The submissions made by the learned counsel appearing for the petitioners in both the Criminal Original Petitions and a perusal of the materials placed before me, disclose that the first respondent herein registered a case in Crime No.6 of 2007 on 02.02.2007 and after concluding the investigation, charge sheet has been filed against the petitioners along with one another accused. During the time of investigation, the Investigation Officer recorded the statement of 55 witnesses. After filing of charge sheet, the same has been taken on file by the learned Judicial Magistrate No.I, Madurai, in C.C.No.73 of 2011, then only, the present petitions have been filed by the respective petitioners for the relief stated supra.

6.No doubt, the Code of Criminal Procedure provides power to the Investigation Officer to lay the charge sheet based on the materials and evidences collected during the time of investigation. After conducting investigation, the learned trial Judge has to testify as to whether the allegations levelled by the Investigating Agency are true or not by way of examining the witnesses. Further, the Code of Criminal Procedure gives an ample power to all the accused for eliciting their case before the witnesses, who are examined on the side of prosecution, then only, considering the factual aspects, the trial Court may convict or acquit the accused.

7.But, in these cases, before conducting trial, the petitioners herein straightaway approached this Court by way of filing the petitions under Section 482 Cr.P.C. In respect of Section 482 Cr.P.C., in the case of Central Bureau of Investigation Vs. A.Ravishankar Prasad and others reported in 2009 (2) SCC (Cri) 1063, the Hon'ble Apex Court has held as follows:

<https://hcservices.ecourts.gov.in/hcserve/cds/> Inherent powers of High Court under Section 482 Cr.P.C. are meant to act ex debito justitiae to do real and substantial justice, for the



administration of which alone it exists, or to prevent the abuse of process of court. These inherent powers can be exercised in the following category of cases: (i) to give effect to an order under the Code; (ii) to prevent abuse of process of court; and (iii) to otherwise secure the ends of justice. Extraordinary power under Section 482 Cr.P.C. should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the power to prevent injustice and secure the ends of justice. India has largely inherited provisions of inherent powers from English jurisprudence, and therefore principles decided by the English courts are of relevance. Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective.

Exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in Cr.P.C. is to prevent abuse of process of court or to secure ends of justice. Both English and the Indian Courts have consistently taken the view that inherent powers can be exercised in those exceptional cases where the allegations made in FIR or the complaint, even if are taken on their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

When the settled legal position is applied to the facts of this case, it is not possible to conclude that complaint and charge-sheet prima facie do not constitute any offence against the respondents. The charge-sheet on the other hand reveals substantial material on record making a clear case under Section 120-B read with Section 420 IPC against respondents and their connivance with the bank officials. It is also not possible to conclude that material on record taken on face value make out no case under Section 120-B read with Section 420 IPC against respondents. Prima facie, this is one case where adequate material is available on record to proceed against the respondents.''

8. Applying the principles laid down in the above said judgment to the present cases on hand this Court is of the view that the statement of witnesses and other materials enclosed along with the charge sheet make out a prima facie case for constituting the offence of cheating and criminal breach of trust. So, the petitioners have to prove their innocence only at the time of trial.

9. In Ajay Kumar Das Vs. State of Jharkhand and another reported



in 2011 (12) SCC 319, the Hon'ble Apex Court has held as follows:

'15. allegations will have to be dealt with by the court at different stages for which liberty would be available to the appellant. In our considered opinion, this is not the stage when the court would make an inquiry into the factual position to find out as to whether or not the appellant is guilty of the charges or not. The appellant, in our considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing of the charge since charge-sheet had already been filed against the appellant also holding that a case under Section 304-B and Section 34 is made out. We do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant.'

10. So, the factual position as to whether the petitioners are found guilty of the charges or not has to be identified only at the end of trial. Therefore, facing trial alone is the relief to the petitioners to prove their innocence. Considering the age of the second petitioner in CrI.O.P.(MD)No.5932 of 2013, viz., S.Kalyani, who is aged about 63 years, I am inclined to dispense with her personal appearance. Accordingly, her personal appearance is dispensed with unless the learned Magistrate feels that her presence is required for the disposal of the case.

11. In view of the above decisions cited supra and discussions made, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Madurai.
2. The Inspector of Police, Central Crime Branch, Madurai City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.
+1CC to Mr.R.Balakrishnan, Advocate, SR.No. 42444
+1CC to Mr.M.Siddarthan, Advocate, SR.No. 42140

order in
CrI.O.P. (MD) Nos.5932 and 5531 of 2013
12.01.2018